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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,669	10/04/2001	Victor Joseph Kudyba	200-0804 DBK	8960

10534 7590 08/20/2003

BLISS MCGLYNN, P.C.
2075 WEST BIG BEAVER ROAD
SUITE 600
TROY, MI 48084

EXAMINER

FUREMAN, JARED

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 08/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,669

Applicant(s)

KUDYBA, VICTOR JOSEPH

Examiner

Jared J. Fureman

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[Signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-17 and 19 is/are rejected.
- 7) ☒ Claim(s) 9 and 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of the IDS, filed on 1/18/2002, and the change of address, filed on 8/28/2002, both of which have been entered in the file. Claims 1-20 are pending.

Claim Objections

1. Claims 4, 13, and 15 are objected to because of the following informalities:

Claim 4, line 3: "RF" should be replaced with --radio frequency (RF)--, in order to clarify the claim.

Claim 13, line 3: "RF" should be replaced with --radio frequency (RF)--, in order to clarify the claim.

Claim 15, line 2: "the" (second occurrence) should be replaced with --a--, in order to prevent a lack of proper antecedent basis for "the rail yard", or claim 15 should depend from claim 14 (which provides antecedent basis for "the rail yard"), rather than claim 11.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5-8, 11, 12, and 14-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Barts et al (US 2002/0082893 A1).

Barts et al teaches a computerized method of automated rail loading of automotive vehicles (22), said method comprising the steps of: attaching tags (encoded symbols, see paragraph 139) to the automotive vehicles; performing an automated railcar (a railcar of train 23) identification (reading encoded symbols on railcars, see paragraph 139); generating an automated load makeup based on the identified railcar and the automotive vehicles; locating the automotive vehicles and loading the automotive vehicles on a railcar specified in the automated load makeup; and shipping the automotive vehicles via the railcar to a final destination specified in the automated load makeup; wherein said step of performing automated railcar identification comprises scanning an identification number of a railcar; the step of performing automated automotive vehicle identification (reading encoded symbols on a vehicle); the step of moving the tagged automotive vehicles to a vehicle release point (ramp 25b) adjacent to a rail yard (not shown); the step of moving the tagged automotive vehicles in the rail yard; wherein said automated load makeup comprises a track spot, railcar number, number of automotive vehicles to be loaded on railcar, and destination route code; performing a final quality check (step 403, figure 61, for example) on the automotive vehicles just prior to loading the automotive vehicles onto the railcar (see figures 1, 2, 7, 9, 55, 61-65, paragraphs 4, 45-55, 61, 65, 125, 128, 139, 140, 144-146, 160-177, 180, 181, 411-420, 727-729, 751-753, 759, and 809).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 10, 13, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barts et al in view of Benson et al (US 5,635,693).

The teachings of Barts et al have been discussed above.

Barts et al fails to specifically teach the step of attaching comprising attaching active radio frequency (RF) tags to the automotive vehicles; the step of performing automated vehicle identification comprising electronically reading the tags on the automotive vehicles by RF antennas installed in a rail shipping yard.

Benson et al teaches a computerized method of tracking automotive vehicles (105), including attaching active radio frequency (RF) tags (210) to the automotive vehicles; and performing automated vehicle identification by electronically reading the tags on the automotive vehicles by RF antennas (125) installed in a rail shipping yard (see figures 1, 2, column 1 lines 14-30, column 3 line 49 - column 4 line 44, column 6 lines 1-67, and column 8 lines 14-31).

In view of Benson et al's teachings, it would have been obvious to one of ordinary skill in the art at the time of the invention to include, with the method as taught by Barts et al, the step of attaching comprising attaching active radio frequency (RF)

tags to the automotive vehicles; the step of performing automated vehicle identification comprising electronically reading the tags on the automotive vehicles by RF antennas installed in a rail shipping yard, in order to allow greater flexibility in reading the tags (for example, the encoded symbols as taught by Barts et al would require a line of sight between the reader and the tag to optically read the tag, while the radio frequency tag as taught by Benson et al does not require a line of sight between the reader and the tag).

Allowable Subject Matter

6. Claim 20 has been allowed over the prior art of record.
7. Claims 9 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is an examiner's statement of reasons for allowance and the indication of allowable subject matter: The prior art of record, taken alone or in combination, fails to teach or fairly suggest: a method of automated rail loading of automotive vehicles including the step of removing the attached tags from the automotive vehicles prior to shipping, in combination with the other claimed limitations as set forth in the claims.

While Zalud et al (US 6,064,705) teaches removing a tag from an automotive vehicle (see column 12 lines 55-58), and Domkowski (US 4,652,528) teaches removing a tag from an automotive vehicle at the end of the assembly line (which would be prior to shipping) (see column 1 lines 47-57), both Barts et al and Benson et al teach using

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the attached tag to identify the automotive vehicle during and/or after shipping. Thus, Barts et al and Benson et al both teach away from removing the attached tag from the automotive vehicle prior to shipping. Therefore, without the benefit of applicant's teachings, there is no motivation one of ordinary skill in the art at the time of the invention to combine the prior art of record in a manner so as to create the claimed invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nishimoto et al (US 2002/0052772 A1), Maloney (US 6,427,913 B1), Janman (US 6,163,278), Zalud et al (US 6,064,705), Jenkins (US 5,801,618), Domkowski (US 4,652,528), and Kukumura (JP 5-221352 A) all teach systems and methods for identifying automotive vehicles for locating, tracking, or shipping purposes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared J. Fureman whose telephone number is (703) 305-0424. The examiner can normally be reached on 7:00 am - 4:30 PM M-T, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (703) 305-3503. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

August 4, 2003

Jared J. Fureman
Jared J. Fureman

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